

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**In re: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION**

)
) **MDL No. 1456**
) **Master File No. 01- 12257-PBS**
) **Subcategory Case. No. 06-11337**

THIS DOCUMENT RELATES TO:

*United States of America ex rel. Ven-A-Care of the
Florida Keys, Inc., et al. v. Dey, Inc., et al.,*
Civil Action No. 05-11084-PBS

) **Hon. Patti B. Saris**
)
) **Magistrate Judge**
) **Marianne B. Bowler**
)
)

**DEY DEFENDANTS' RESPONSE TO PLAINTIFFS' AND THE ROXANE
DEFENDANTS' MOTION FOR AN EMERGENCY STATUS CONFERENCE**

Defendants Dey, Inc., Dey Pharma, L.P. (formerly known as Dey, L.P.) and Dey L.P., Inc. (collectively, "Dey") submit this response to Plaintiffs' and the Roxane Defendants' motion for an emergency status conference.

Dey understands that one of the developments referenced in the motion by Plaintiffs and the Roxane Defendants involves a possible delay of the April 26 trial date. Dey does not oppose a continuance of the April 26 trial date. However, any new trial setting in this Action must recognize the existing trial conflicts in June and July for the very lawyers that will be trying the Dey case in this Court. A new trial date in this Action must take into account those previously scheduled trials, particularly since several of the state courts in which those trials are set have denied requests to reschedule those trials. In light of the numerous trial conflicts in other jurisdictions detailed below, the earliest date that Dey could proceed with a trial in this action is September 13, 2010.

First, Martin Murphy, local trial counsel for Dey in this Action, has a firm trial date of June 21, 2010 in a case entitled *Cahaly et al. v. Benistar Property Exchange, Inc. and Merrill, Lynch, Pierce, Fenner and Smith, Inc.*, Consolidated Action Nos. 01-0116-BLS2, 01-0299-BLS-2, 01-0330-BLS2, 01-0581-BLS2-010581-BLS2, 01-3433-BLS-2, 01-3433-BLS2, 01-4305-BLS2, pending in Suffolk County Superior Court. That trial is scheduled to last one week.

In addition to Mr. Murphy's trial conflict, Dey's national trial counsel Kelley Drye & Warren LLP ("Kelley Drye") also has numerous conflicting trial dates in June and July. Kelley Drye is also national counsel for Dey's parent, Mylan Inc., and Mylan Pharmaceuticals Inc. (collectively, "Mylan") in drug pricing litigation brought by state Attorneys General in various jurisdictions around the country, including a number of cases that are scheduled for trial in June and July. Many Kelley Drye lawyers representing Dey in this action are also representing Mylan in the Mylan cases scheduled for trial, and several Kelley Drye lawyers will be playing lead roles both in the defense of Dey in this Action as well as in preparing for and defending Mylan in the various Mylan cases scheduled for trial.

Kelley Drye is representing Mylan in the following other pharmaceutical pricing actions currently scheduled for trial in 2010:

(a) a trial starting on June 7, 2010 in *State of Hawaii v. Abbott Laboratories, Inc., et al.*, Civil No. 06-1-0720, pending in the Circuit Court of the First Circuit of the State of Hawaii, before Hon. Gary W. B. Chang. Mylan expects that the Hawaii trial will last roughly three to four weeks.

(b) a trial starting on June 14, 2010 in *State of Alabama v. Mylan Laboratories, Inc., et al.*, Nos. 2005-219.50, 2005-219.51 and 2005-219.72, pending in the

Circuit Court of Montgomery, Alabama before Hon. Charles Price. A motion to consolidate the three Mylan entities in that case with Par Pharmaceutical, Inc. ("Par") is pending. Mylan expects that if the consolidation motion is denied, the Alabama trial will last three to four weeks.

(c) a trial starting on July 19, 2010 in *Commonwealth of Massachusetts v. Mylan Laboratories, Inc., et al.*, 1:03-cv. 11865-PBS, pending before this Court. The Court has also set Par for trial in that action beginning on the same date. Mylan expects that a trial of that action against Mylan alone will last roughly three to four weeks.

(d) a trial presently scheduled to start on December 6, 2010 in *In re: Mississippi Medicaid Pharmaceutical Average Wholesale Price Litigation*, Master Docket No. 65586-65632, 66312-66314, pending in the Chancery Court of Rankin County, Mississippi, Second Chancery Court Division, before Hon. Thomas L. Zebert. A motion to consolidate multiple defendants in that case is pending. Mylan expects that a trial of that action against Mylan alone will last roughly three to four weeks.

On February 19, 2010, Mylan moved to vacate the June 7, 2010 trial setting in the Hawaii action in light of conflicts with the subsequent trial dates set in this Action and in cases brought by the State of Alabama and the Commonwealth of Massachusetts. On March 8, 2010, the Hawaii court denied the motion to vacate the June 7 trial setting in Hawaii, indicating that its March 19, 2009 order setting the June 7 trial date, had priority over subsequent orders by other courts setting conflicting trial dates, and that any motion to vacate a trial setting should have been directed to the courts that subsequently set trial dates rather than the Hawaii court.

On March 11, 2010, Mylan moved to vacate the June 14, 2010 trial setting in the Alabama case. At a hearing on March 23, 2010, the Alabama court denied the motion to vacate,

but indicated that if the Hawaii case proceeded to trial on June 7, the Alabama court would not require Mylan to proceed with a simultaneous trial in Alabama on June 14.

In light of the various trial conflicts set forth above, Dey cannot proceed to trial in this matter before September 13, 2010 at the earliest.

CONCLUSION

For the foregoing reasons, Dey respectfully requests that if the April 26, 2010 trial date is adjourned, the trial be reset to begin no earlier than September 13, 2010.

Dated: March 25, 2010

Respectfully submitted,

KELLEY DRYE & WARREN LLP

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on March 25, 2010, a copy to LexisNexis File & Serve for posting and notification to all parties.

s/ William A. Escobar